

1 Honorable Marsha J. Pechman
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9 **UNITED STATES DISTRICT COURT**
10 **WESTERN DISTRICT OF WASHINGTON**

11 HUONG HOANG, an individual,

12 NO. 11-cv-01709-MJP

13 Plaintiff,

14 vs.
15 **AGREED PRETRIAL ORDER**
16 **(PROPOSED)**

17 AMAZON.COM, INC., a Delaware
18 corporation, and IMDB.COM, INC., a
19 Delaware corporation,

20 Defendants.

21 Pursuant to Local Civil Rule 16, Plaintiff Huong Hoang (“Plaintiff” or “Hoang”)
22 and Defendant IMDb.com, Inc. (“IMDb.com, Inc.”) jointly submit this proposed pretrial
23 order.

24 **I. JURISDICTION**

25 Plaintiff asserts this Court has jurisdiction by virtue of 28 U.S.C. § 1332, because
26 Plaintiff Hoang is a citizen of a different state than IMDb and the amount in controversy
27 exceeds \$75,000. IMDb agrees that Hoang is a citizen of a different State than IMDb,
28 but disagree that the amount in controversy exceeds \$75,000.

29 **II. CLAIMS AND DEFENSES**

30 Plaintiff will pursue at trial the following claims and affirmative defenses:

31 1. Breach of contract.

IMDb will raise the following affirmative defenses at trial:

1. Hoang's claims are barred by the equitable doctrine of waiver.

2. Hoang's claims are barred by the First Amendment of the United States

Constitution and article I, section 5 of the Washington Constitution.

III. ADMITTED FACTS

The following facts are admitted by the parties:

1. IMDb owns and operates the Internet Movie Database, a free website available at www.imdb.com, which publicly displays information about movies, television shows, and the actors, directors, and other professionals who make them. IMDb features over 130 million data items, including more than 2 million movies, television, and entertainment programs, and over 4 million cast and crew members.

2. IMDb also owns and operates IMDbPro, which is a paid subscription service that provides additional industry information.

3. To register for IMDbPro, a subscriber accepts the IMDbPro Subscriber Agreement, which incorporates the Privacy Policy, and provides his or her name and payment information.

4. Hoang signed up for IMDb in 2001 and submitted information about herself and others for inclusion on its public website.

5. IMDb profiles have varying amounts of information about performers.

6. In 2004, Hoang obtained a free trial of IMDbPro. Starting in 2004, Hoang paid IMDb using her credit card for various one-time services, such as posting a photograph or resume. During these transactions, she provided her legal name to IMDb. She also accepted IMDb's Subscriber Agreement and Privacy Notice.

7. Hoang's birth year is 1971.

8. At present, Hoang's accurate date of birth is published on IMDb.com.

IV. ISSUES OF LAW

The following are the issues of law to be determined by the Court:¹

1. Is IMDb's Subscriber Agreement a legally binding contract between IMDb and Hoang?

2. If IMDb's Subscriber Agreement forms a valid contract, is IMDb's Privacy Policy a part of that contract?

3. Is Giancarlo Cairella an agent of IMDb.com?

4. If the jury finds for Plaintiff, should the Court order injunctive relief?

5. Is Hoang barred from any recovery by virtue of her own breach of contract?

6. Are Hoang's claims barred by the First Amendment of the United States

Constitution and article I, section 5 of the Washington Constitution?

V. EXPERT WITNESSES

The parties do not offer any testimony from expert witnesses.

VI. OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

On behalf of Plaintiff:

| Name/Address | May/Will Testify | Nature of Testimony |
|--|------------------|--|
| Huong Hoang, Plaintiff, c/o Newman Du Wors, 1201 Third Avenue, Suite 1600, Seattle, Washington 98101 | Will | Huong Hoang will testify to her acting career; her practices regarding keeping her age secret; her interactions with IMDb and Amazon; her requests to have IMDb remove her date of birth from her profile; her IMDb profile changing to reflect her actual date of birth; her auditions for acting jobs after her date of birth was disclosed and directors' reactions to her age; IMDb's importance in the acting industry; age discrimination in the acting industry; and her damages. |

¹ Plaintiff asserts that some of these questions have already been resolved at summary judgment.

| Name/Address | May/Will Testify | Nature of Testimony |
|---|------------------|--|
| Joe Kolkowitz, Player's Talent Agency, 16130 Ventura Blvd., Suite 235, Encino, California 91436 | Will | Joe Kolkowitz will testify to casting procedures and methods in the entertainment industry; age discrimination in the entertainment industry; IMDb's importance in the entertainment industry; trends in Ms. Hoang's casting success; Ms. Hoang's marketability as an actor before and after her age was disclosed; and casting directors' and directors' reactions to the age of actors. |
| Camille Solari, 849 S Broadway #808, Los Angeles, California 90014 | May | Camille Solari may testify that she asked IMDb to remove her date of birth and that IMDb refused, that she did not give IMDb permission to use her personal information to search PrivateEye.com, and that she has suffered damages as a result of IMDb posting her date of birth. She may also testify about age discrimination in the acting industry, and on the importance of IMDb to casting decisions. |
| Stacey Newsome, P.O. Box 381161, Las Angeles, CA 90038 | May | Stacey Newsome may testify that she asked IMDb to remove her date of birth and that IMDb refused, that she did not give IMDb permission to use her personal information to search PrivateEye.com, and that she has suffered damages as a result of IMDb posting her date of birth. She may also testify about age discrimination in the acting industry, and on the importance of IMDb to casting decisions. |
| Joan McCall, 1437 Rising Glen Rd. , Los Angeles, California 90069 | May | Joan McCall may testify that she asked IMDb to remove her date of birth and that IMDb refused, that she did not give IMDb permission to use her personal information to search PrivateEye.com, and that she has suffered damages as a result of IMDb posting her date of birth. She may also testify about age discrimination in the acting industry, and on the importance of IMDb to casting decisions. |

| Name/Address | May/Will Testify | Nature of Testimony |
|--|------------------|--|
| Micah Ballinger, 450 Piedmont Ave NE #1405, Atlanta, Georgia 30308 | May | Micah Ballinger may testify that he asked IMDb to remove his date of birth and that IMDb refused, that he did not give IMDb permission to use his personal information to search PrivateEye.com, and that he has suffered damages as a result of IMDb posting his date of birth. He may also testify about age discrimination in the acting industry, and on the importance of IMDb to casting decisions. |
| Records custodian, SAG-AFTRA, 5757 Wilshire Blvd., 7th Floor, Los Angeles, California 90036-3600 | May | The records custodian may testify to SAG-AFTRA's communications with IMDb and authenticate documents from SAG-AFTRA. |
| Jennifer Ortega, 1821 Q Street, Sacramento, California 95811 | May | Jennifer Ortega may authenticate documents from PrivateEye.com. |
| Giancarlo Cairella, IMDb and Amazon Employee, c/o Perkins Coie, 1201 Third Avenue, Suite 4900, Seattle, Washington 98101 | Will | Giancarlo Cairella will testify to IMDb's and Amazon's policies; IMDb's interactions with Ms. Hoang; Ms. Hoang's requests to have IMDb remove her date of birth from her public profile; IMDb's changes to Ms. Hoang's profile to show Ms. Hoang's actual date of birth; IMDb's use of Ms. Hoang's credit card information to find Ms. Hoang's legal name; IMDb's search of PrivateEye.com records to find Ms. Hoang's date of birth; IMDb's policies; IMDb's practice of updating IMDbPro user information. |
| Thomas Whitcomb, IMDb Employee, c/o Perkins Coie, 1201 Third Avenue, Suite 4900, Seattle, Washington 98101 | May | Thomas Whitcomb may testify to IMDb's and Amazon's payment processing system; storage of credit card information; and "tokenization" of payment information. |

| 1 | Name/Address | May/Will Testify | Nature of Testimony |
|---|--|---------------------|--|
| 2 | 3 David Zapolski, 4 Amazon Employee, c/o 5 Perkins Coie, 1201 Third Avenue, Suite 4900, Seattle, Washington 98101 | May | David Zapolski may testify to communications with and/or about Hoang. |

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7 **On behalf of IMDb:**

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| 9 | Name/Address | May/Will Testify | Nature of Testimony |
|----|--|---------------------|---|
| 10 | 11 Giancarlo Cairella, 12 IMDb.com, Inc., c/o 13 Perkins Coie, LLP, 1201 14 Third Avenue, Suite 15 4900, Seattle, WA 16 98101 | 17 Will | 18 Mr. Cairella will testify concerning Hoang's use 19 of and profiles on IMDb.com, IMDbPro and IMDbResume; communications between Hoang and IMDb; IMDb's receipt and use of customer payment information; IMDb's policies and practices regarding the submission, research, verification, posting, correction and removal of information on IMDb.com and IMDbPro profiles; IMDb's privacy policies, subscriber policies, and terms of use agreements; IMDb's policies regarding the storage and use of credit card data submitted to IMDb; and other matters pertinent to this action, including those set forth in his deposition and his declarations (Dkt. Nos. 14, 86, 136). |
| 20 | 21 Tom Whitcomb, 22 IMDb.com, Inc., c/o 23 Perkins Coie, LLP, 1201 24 Third Avenue, Suite 4900, Seattle, WA 98101 | May | Mr. Whitcomb will testify concerning IMDb databases and other matters pertinent to this action, including those set forth in his deposition and his declaration (Dkt. No. 90). |

| 1 | Name/Address | May/Will Testify | Nature of Testimony |
|----|---|---------------------|---|
| 2 | Huong Hoang, c/o Keith Scully, Newman Du Wors, 1201 Third Avenue, Suite 1600, Seattle, WA 98101 | Will | Huong Hoang will testify concerning her claims against IMDb; her date of birth; her past, present, and future acting career; her legal name and her stage name; her use of IMDb.com, IMDbPro, and IMDbResume; her IMDb.com and IMDbPro profiles, including submission of information for inclusion on those profiles, her efforts to change her date of birth on her IMDb.com profile, and the accuracy of information on her IMDb.com profile; her submission of credit card information to IMDb; her claimed damages; and other matters pertinent to this action, including those set forth in her depositions and declarations (Dkt. Nos. 73, 79, 98, 115, 123, 140). |
| 11 | Joe Kolkowitz, Player's Talent Agency, 16130 Ventura Blvd., Suite 235, Encino, CA 91436 | May | Mr. Kolkowitz may testify concerning Hoang's past, present, and future acting career; Hoang's legal name and stage name; his use of IMDb.com, IMDbPro, and IMDbResume; Hoang's claimed damages; and other matters pertinent to this action, including those set forth in his deposition and the Declaration of Joe Kolkowitz in Support of Plaintiff's Motion for Summary Judgment (Dkt. No. 110). |

18 **VII. EXHIBIT LISTS**

19 Attached are Plaintiff's Exhibit List as Exhibit 1 and IMDb's Exhibit List as
20 Exhibit 2. The parties have stated their position regarding admissibility and authenticity
21 for each listed exhibit.

22 **VIII. ACTION BY THE COURT**

23 This case is scheduled for trial before a jury on April 8, 2013.

24 Trial briefs shall be submitted to the court on or before April 3, 2013. Jury
25 instructions requested by either party shall be submitted to the court on or before April 3,
26 2013. Suggested questions of either party to be asked of the jury by the court on voir dire
27 shall be submitted to the court on or before April 3, 2013.

28 This order has been approved by the parties as evidenced by the signatures of their

1 counsel. This order shall control the subsequent course of the action unless modified by a
2 subsequent order. This order shall not be amended except by order of the court pursuant
3 to agreement of the parties or to prevent manifest injustice.

4 Dated this _____ day of _____, 2013.
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8 Honorable Marsha J. Pechman
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1 FORM APPROVED

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3 **NEWMAN DU WORS LLP**

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7 By: /s/ Keith Scully
8 Derek Newman, WSBA No. 26967
9 Keith Scully, WSBA No. 28677
10 Charlotte Williams, WSBA No. 42864
11 Attorneys for Plaintiff

12 **PERKINS COIE LLP**

13 By: /s/ Breena Roos
14 Harry H. Schneider, Jr., WSBA No. 9404
15 Breena M. Roos, WSBA No. 34501
16 Ashley A. Locke, WSBA No. 40521
17 Attorneys for IMDb.com, Inc.